



January 11, 2010

Mr. Gale Mattison  
State Contracting Standards Board  
Room 173, State Office Building  
165 Capitol Avenue  
Hartford, CT 06106

Dear Mr. Mattison,

This letter is in response to the State Contracting Standards Board's (SCSB) request for comments on the ConnDOT report *Cost-Benefit Analysis for Railroad Bridge, Mast Arm and Sign Support Inspections* dated December 20, 2010. We appreciate the opportunity to provide comments on the report and wish to commend ConnDOT for producing their analysis in such a short period of time and with limited information and direction.

Our comments are divided into three sections as indicated and attached hereto:

- I. Background information about ACEC/CT and the consulting engineering community's involvement with bridge safety inspections,
- II. Specific comments on the ConnDOT report, and
- III. Concerns regarding the Board's authority and procedures in requesting ConnDOT to produce a cost-benefit analysis.

As presented, ConnDOT's analysis clearly shows that it costs less to perform these inspection services with the use of private consultants than the alternative, and in these difficult economic times, this cost savings is very important to our state. Also of importance is our belief that the costs included in the analysis for state forces to perform these inspections are understated, particularly in the area of indirect costs. Although we understand that ConnDOT was only working with the information they were provided in regards to these indirect costs, we believe that when the true value of these costs are determined and included in the analysis, the disparity between the costs of state forces and private consultants will show an even greater savings to the state by using private consultants.

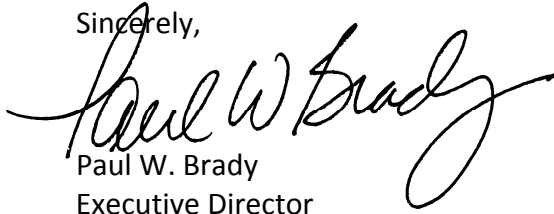
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Chair, Privatization Contract Committee  
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The decision on this matter will have a serious impact on not only ACEC/CT's member companies, but also on the livelihood of the thousands of Connecticut residents who work for our member firms, raise their families here, and pay taxes to the State of Connecticut.

It is imperative that the Board act deliberatively, openly and fairly when considering the future of private sector contracts in Connecticut, and that it complies fully with all statutory provisions and directives when implementing the review process. If we can be of any assistance or provide further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Paul W. Brady". The signature is fluid and cursive, with the first name "Paul" and last name "Brady" clearly legible. The middle initial "W" is written in a smaller, more compact style between the first and last names. The signature is positioned to the right of the word "Sincerely,".

Paul W. Brady  
Executive Director

Attachments - 3

## **SECTION I. BACKGROUND INFORMATION:**

The American Council of Engineering Companies of Connecticut (ACEC/CT) represents more than 90 consulting engineering firms with over 1,000 employees, many of which contract directly with ConnDOT to provide the subject safety inspections.

Engineering firms have been performing bridge safety inspections for ConnDOT since the 1980s following the deadly I-95 Mianus River Bridge collapse in Greenwich. In the immediate aftermath of that tragedy, Governor O'Neill ordered the hiring of consulting engineering firms to supplement ConnDOT inspection staff by providing inspection services for state and municipal owned bridges and to recommend repairs to remediate unsafe conditions due to many years of neglect.

Since that time, consulting engineering firms have worked hand-in-hand with ConnDOT, FHWA, municipal engineers and others to inspect and provide detailed reports on the condition of bridges across the state. These inspection contracts have always been performed under the direct supervision of ConnDOT employees. Consultant inspectors' reports adhere strictly to the ConnDOT Bridge Inspection Manual (BIM). All reports submitted by consulting firms are reviewed by ConnDOT employees and per the BIM, a quality assurance team made up of ConnDOT engineers is assigned to regularly review the accuracy and procedures of each consultant inspection team. The combination and close coordination of consulting engineering firms and ConnDOT keep vital components of Connecticut's transportation infrastructure safe.

The members of ACEC/CT are proud of their record of providing high quality inspection services to the State of Connecticut. ACEC/CT's engineers and trained staff have delivered these important services in a timely, cost effective manner for nearly 30 years, and ACEC/CT's members look forward to maintaining their commitment to the State of Connecticut and the public well into the future.

## **SECTION II. SPECIFIC COMMENTS:**

We offer the Board the following specific comments with regard to the ConnDOT cost-benefit analysis (CBA):

Commissioner Parker's cover letter emphasizes that, "It is vital, regardless of the outcome, that the Department have continuous access to adequate resources to ensure that the bridges are inspected on schedule and that there are safeguards to ensure that there is capacity and flexibility to support emergency situations" and later "...safety of the traveling public is at the forefront of these discussions." We agree wholeheartedly with his comments and submit that a mix of in-house and consultant forces (as it is today) is the best and most cost-effective way that ConnDOT can accomplish this goal and protect public safety.

- I. Introduction: We have no comments on this part of the report at this time, but reserve the right to comment in the future if the Board provides the opportunity for future public comment.
- II. Methodology (comments tied to specific paragraphs of the report)
  - a. No comment at this time, but reserve the right to comment in the future if the Board provides the opportunity for future public comment.
  - b. The validity of this assumption is questioned as the employment practices of the consultants are more flexible and cost-effective than the state's practices. Several examples of this are:
    - Consultant inspection crews have the flexibility to work more than eight hours a day. This is done to avoid partial day return trips to structures. This results in less time spent on mobilization (travel to sites, setting up signs, etc.) and less direct costs.
    - The nature of these inspections require a significant amount of nighttime and weekend work due to railroad access and occasional traffic control issues on heavily travelled interstate highways in urban areas. Even assuming that state work forces would be willing to work nights and weekends, they would have to be paid overtime versus straight time for the consultants.

- For inspections requiring traffic control, a consultant's two or three person crew is able to perform a variety of tasks including traffic control set-up and breakdown, access equipment operation, inspection and minor maintenance. In contrast, state union forces are restricted as to the type of tasks that each person can perform, resulting in the potential need for additional personnel to perform similar tasks. This could increase the work force by four to as many as eight or nine workers per assignment (if multiple crash trucks with drivers are utilized for traffic control).
- c. We are not sure that comparing titles alone is reasonable. Rather, job descriptions, and perhaps even resumes, should be compared to develop an adequate comparison.
- d. No comments at this time, but reserve the right to comment in the future if the Board provides the opportunity for future public comment.
- e. Question: Is this inclusive of all non-productive hours (vacation, sick, bereavement, union meetings, non-technical training, etc.)? Based on the leave additive rate and 35/40 hour work per week disparity, it would take more calendar days for state employees to accomplish the same work as consultants. Because inspections must be completed on a two-year schedule, more state workers may be needed to meet this schedule or risk losing federal funding. Also, DOT hours to perform the same work would be higher because of union rules regarding segregation of activities i.e. inspector vs. a maintainer tightening bolts.
- f. No comment at this time, but reserve the right to comment in the future if the Board provides the opportunity for future public comment.
- g. ConnDOT should provide the detail behind this assumption to allow for an informative comment.
- h. Some of the direct costs involve contracts with suppliers who include labor with a service. For example, a direct cost for rental of a truck may include a driver. If the state were to rent the truck with driver, would

state prevailing wage laws apply? If so, this cost could be increased significantly.

- i. The assumptions in this section should be analyzed more closely. We cannot comment without additional information.
- j. The costs estimated in the ConnDOT report Attachment A (\$71,173.33) appear reasonable; however, the costs estimated in Attachment B (\$12,546.67) seem low at only \$1,568 average per new employee. As indicated elsewhere, many of the costs would be incurred during the first year.
- k. OPM should provide ConnDOT and the Board with a more thorough description of this rate. Does it attempt to cover overhead expenses incurred from other agencies or just ConnDOT? What does it include? What doesn't it include? Why do costs for this also appear in the Consultant columns?
- l. No comment at this time, but reserve the right to comment in the future if the Board provides the opportunity for future public comment.

III. Additional Items: We agree with the comments of the Department with regards to these items and make the following additional comments:

- It is imperative that ConnDOT maintain its inspection schedule or federal funding for inspections will be put at risk.
- Although the number of employees listed in the cost-benefit analysis is not large, the analysis does not appear to consider additional staff that may be needed to support a larger state inspection staff, if the work is done in-house. This may be important for highway bridge inspection work.
- There are specialized inspections (moveable bridges, underwater inspections, etc.) that are so infrequent or specialized that it would not be cost effective to hire and train the specialized state forces necessary to perform such inspections.

- The Department has indicated a need to be able to continue to contract with consultants to provide emergency inspections. An example of this is the additional inspections mandated by the Federal Highway Administration following the 2007 collapse of the I-35W Mississippi River Bridge in Minneapolis, Minnesota, which had to be performed in just a few weeks. Another example is the need to be able to timely inspect bridges and other structures after a widespread disaster such as a hurricane. If the state were to stop using the consultant community for bridge inspections, those specialized professionals might be reassigned to other states or seek work elsewhere, and those resources might not be available in the event of an emergency.
- Does the Department have any assurances from the state employees union that the work rule changes assumed in the analysis would be approved by the union without additional compensation?
- Calculation of the state's indirect cost should be subject to the same scrutiny as consultants. This means compliance with the Federal Acquisition Regulations. In addition to the additional costs associated with training, equipment and supplies in the first year of performing inspections in-house, there is no indication in the analysis that the Department has included additional maintenance staff for vehicles and equipment and the administrative costs of recruiting highly specialized employees. Are the figures from OPM determined by the Statewide Cost Allocation Plan (SWCAP) determined by the State Comptroller?
- Consultants are required to maintain insurance policies protecting the state from errors and omissions, workers compensation, etc. Although accidents and mistakes are rare, the consultant's insurance provides coverage. If a state worker is injured or if a third party sues the state, the state self insures for these losses. The state's risk management costs should also be included in this analysis.

ConnDOT's analysis is inadequate to make any definitive conclusions about whether the Board should recommend performing safety inspections with state employees.

### **SECTION III. STATUTORY AUTHORITY:**

Since the effective date of the Statute (January 1, 2009) creating the State Contracting Standards Board (the "Board"), the Board has had three official meetings with one occurring on each of the following dates: April 21, 2010; May 24, 2010; and October 14, 2010. In addition, the Board's Privatization Committee has held meetings on June 16, 2010, June 25, 2010, August 6, 2010 and September 15, 2010.

A review of the meeting minutes of the April 21<sup>st</sup> and May 24<sup>th</sup> meetings reveals that the Board discussed the need to create committees including Code and Regulations and Privatization, and in fact on May 24<sup>th</sup> the Board created both of these committees. Additionally, on May 24<sup>th</sup> the Board received a briefing from an Assistant Attorney General regarding the Board's statutory obligations including the "[a]doption of regulations to 12 different instances – contract methods, specifications, implementation of training contract, consulting services among other minor information systems, drafting contracts, training and overseeing all procurement employees, among others."

The Board next held a meeting on October 14, 2010, at which the sole matter addressed by the Board was the issue of the privatization of bridge inspection contracts by the Connecticut Department of Transportation. This matter was discussed by the Board based on a report of the Privatization Committee delivered by Mr. Gale Mattison who "...reported that this Committee has met and has been looking into the issue of the Department of Transportation's approach to bridge inspections, which involves the use of both state employees and private contractors." He also stated "...that the Committee has adopted a Resolution asking the Board to approve a request that the Department of Transportation conduct a cost-benefit analysis in relation to its bridge safety evaluation process." After a brief discussion, the Board adopted a resolution put forward by the Privatization Committee, as follows:

"The State Contracting Standards Board requests the Connecticut Department of Transportation to conduct a cost-benefit analysis as contemplated in CGS Sections 4e-16(b) and 4e-16(l)(1) in relation to its bridge safety evaluation process. The DOT may segment this work into three sequential components: traffic signal and overhead sign mast arms, railroad bridges, and large highway bridges."



This resolution is the directive upon which the Connecticut Department of Transportation issued its cost-benefit analysis dated December 20, 2010.

It is the position of ACEC/CT and its member firms that the basis upon which the Board presented, voted and passed the aforesaid resolution is statutorily flawed and that the Board did not act within the limitations set forth in the enabling statute and furthermore is not statutorily authorized to act through the "privatization committee" for such purposes.

The privatization committee has no statutory authority to conduct such hearings, request information, review agency contracts or "contract areas", inquire into privatization contracts, or to make recommendations for adoption of resolutions by the Board dealing with directing state agencies to conduct cost-benefit analysis on privatization contracts. The Board's authority to create a "privatization contract committee" is governed by C.G.S. § 4e-16 (f) (1). This section states in relevant parts:

"(f) (1) There shall be a privatization contract committee of the State Contracting Standards Board that shall review, evaluate, issue advisory reports and make recommendations on business cases submitted to the board by any state contracting agency."  
(2) ...the State Contracting Standards Board shall immediately refer such business case to such privatization contract committee. The privatization contract committee shall employ a standard process for reviewing, evaluating and approving any such business cases. (3) The privatization committee shall evaluate the business case and submit the committee's evaluation to the State Contracting Standards Board for review and approval.

Pursuant to the § 4e-16 (f) the purpose of the "privatization contract committee" is strictly limited to "reviewing, evaluating and approving any such business cases" and "submit[ting] the committee's evaluation to the State Contracting Standards Board for review and approval." The committee has no independent authority to conduct reviews of "privatization" contracts of state agencies or evaluate any such contract areas and make recommendations to the Board for action with regard thereto.

A review of the meeting minutes of the "Privatization Committee" reveals just how far outside the scope of its authority the committee acted. From the Privatization Committee's June 16, 2010 meeting:

"Overview of CGS Chapter 62: There was a general review and discussion of Section 4e-16 of Chapter 62 which specifically requires a "privatization contract committee" within the Board and which outlines the various procedural steps that state contracting agencies must follow in considering a privatization contract for the privatization of any state service that is not currently privatized. Members discussed the statutory call for a cost-benefit analysis as part of that process and the elements which must be included in that analysis and the role and importance of each such element. There was also a discussion of the role of that analysis in a state contracting agency's "business case" in support of privatization."

"Core Government Services: The members conducted a discussion of the meaning and intention of the term "core government services" in connection with the Board's and the Committee's statutory role in the state contracting process under Chapter 62."

"Other Business: The Committee reviewed and briefly discussed a series of letters from the CSEA and the American Council of Engineering Companies relating to the question of whether the Department of Transportation's bridge safety inspections are considered "core government services" within the meaning of Section 4e-16. The members decided to send a letter to DOT Commissioner Marie requesting some factual and background information on its bridge inspection practices."

Such actions by the Privatization Committee in discussing and evaluating a "statutory call for a cost-benefit analysis as part of that process and the elements which must be included in that analysis and the role and importance of each such element", or

“members conduct[ing] a discussion of the meaning and intention of the term “core government services”... [and] whether the Department of Transportation’s bridge safety inspections are considered “core government services”, or the “members decid[ing] to send a letter to DOT Commissioner Marie requesting some factual and background information” are well outside its statutory authority.

Likewise, during the June 25, 2010 Privatization Committee meeting the committee “...discussed... the distinctions, if any, between “existing” and “new” privatization contracts as described in CGS Secs. 4e-16(a), 4e-16(l), and 4e-17(a)”... “[whether or not] the Board may review additional existing privatization contracts”... and “[what] [d]oes the word “review” mean”... and “does it mean a review in the sense of requiring the state contracting agency to prepare a “cost-benefit analysis”... “the Board also has very broad review and investigative authority under Sec. 4e-3(b)”, and...”whether the CT DOT’s bridge inspections are a “core government function” under Sec. 4e-16”... that with respect to review authority of the Board its “either as a formal “review” under Sec. 4e-16(l)(1) or independently (*i.e.*, outside a review) under Sec. 4e-3(b). It was the unanimous sense of the committee that it should consider the bridge inspection question under the broad authority of Sec. 4e-3(b) rather than in the context of a formal “review.” The committee also “reviewed a letter drafted by Mr. Fox (as a result of a discussion at the June 16, 2010 meeting) from the Board to the DOT Commissioner seeking certain factual and background information on the Department’s bridge inspection practices.” And finally, the committee agreed that “[a]mong the items to be discussed at the next meeting will be the consideration of the CT DOT’s response to the Board’s letter on bridge inspections and discussion of the Process Flow Chart for Board actions and decisions.”

All of these items discussed by the Privatization Committee and the actions taken by it at that meeting were outside the statutory authority established under § 4e-16 (f).

Similarly, on September 15, 2010 the Privatization Committee conducted a meeting where they heard a presentation from Connecticut Department of Transportation personnel regarding “...key issue to be considered in developing a cost-benefit analysis is whether it should focus on the “incremental costs” or the “total costs” of having the bridge safety inspection program conducted solely by state employees or solely by private employees or by a combination of both as is currently done. “, and committee members asked “questions relating to the precise methodology and timing of

conducting an analysis of this kind.” The committee was also told by DOT personnel that “...if DOT were directed to go forward, the timing would likely require 1 to 2 months for initial coordination with other State departments and agencies and then a further 6 to 8 months to undertake and complete the actual studies. “

Committee members also “exchanged questions and comments with [DOT personnel] covering DOT’s current practices in using private contractors for certain kinds of work, how contractors are approved to participate in the bridge inspection program, how field inspection issues are addressed, and how “BFO” (benefits, fringe, and overhead) factors into project cost calculations.”

The Committee also heard comments from the Executive Financial Officer for OPM, who “said that the Office would generally follow whatever cost-benefit analysis methodology ConnDOT adopted and that such a process “...would be a “learning experience” for [OPM]. The Executive Financial officer also said “that he thought that the time frame described by DOT [for the cost-benefit analysis] [was] a reasonable estimate.”

The committee then passed a motion stating that the committee “recommends that the State Contracting Standards Board formally request the Connecticut Department of Transportation to conduct a cost-benefit analysis as contemplated in CGS Sections 4e-16(b) and 4e-16(1) in relation to its bridge safety evaluation process. “

Like the actions taken at both the June 16th and June 25th meetings, the matters discussed and the actions taken by the Privatization Committee at this meeting were all outside the statutory authority established under § 4e-16 (f).

The Board should consider that its current actions and the acts of its privatization committee are outside the authority granted to it under Chapter 62 of the Connecticut General Statutes and more importantly the cost-benefit analysis prepared by the Connecticut Department of Transportation, although prepared in a good faith effort to comply with the Board’s directives, is not to the standards contemplated by the law. The Board has a statutory directive to develop policies and procedures, including templates for use by state contracting agencies for the development of a cost-benefit analysis. See § 4e-16 (m). Failing to do so prior to requiring a state agency to produce such a document for the purposes of validating a long-standing privatization contract area is tantamount to dereliction of the Board’s duty to the State of Connecticut and its duties

under the statute. This process is a serious matter and should not be done in the atmosphere of a "learning experience" as stated by the Executive Financial Officer for OPM.

It should also be noted that the Board has a statutory directive to adopt a number of regulations and procurement procedures for various state agencies, as provided for in Connecticut General Statutes § 4e-20; 4e-21; 4e-22; 4e-23; 4e-24; 4e-26; 4e-27; 4e-28; 4e-41; 4e-42; 4e-43; 4e-24; 4e-45; 4e-46; and 4e-47, none of which has been accomplished by the Board. Complying with these statutory directive is a critical function of the Board and will have a direct impact of the Board's consideration of any cost-benefit analysis provided by a state contracting agency under § 4e-16.

The Board is also required to operate under the Uniform Administrative Procedure Act, Connecticut General Statutes Chapter 54.

Sec. 4-167 states,

"Organization description to be adopted. Rules of practice. Public inspection. (a) In addition to other regulation-making requirements imposed by law, each agency shall: (1) Adopt as a regulation a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests; (2) adopt as a regulation rules of practice setting forth the nature and requirements of all formal and informal procedures available provided such rules shall be in conformance with the provisions of this chapter; and (3) make available for public inspection all regulations and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions, and all forms and instructions used by the agency."

And Sec. 4-166, Definitions, states, "(1) "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases...."

While the Board may be eager to begin its work, it must first properly organize and develop procedures and regulations which will be reviewed by the appropriate oversight

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authorities (the Attorney General and the General Assembly's Regulation Review Committee, for example) to ensure that the statute's intent is being followed and that the rights of the public are protected.